



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-20/49247

PRELIMINARY RECITALS

Pursuant to a petition filed May 17, 2001, under Wis. Stat. § 49.455(8)(c) (1999-00) and Wis. Admin. Code § HFS 103.075(8)(c) (November 2000), to establish that petitioner's wife needs income above the level provided by the Medical Assistance (MA) program spousal impoverishment rules' Minimum Monthly Maintenance Needs Allowance (MMMNA), a fair hearing was held on June 20, 2001 in Fond du Lac, Wisconsin. At petitioner's request the record was held open until July 20, 2001.

The issue for determination is whether it has been established that petitioner's wife needs income above the level provided by the MMMNA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

(not present at the June 20th hearing)

Petitioner's Representative:

(petitioner spouse)

Division of Health Care Financing (DHCF)
Department of Health & Family Services (DHFS)
State of Wisconsin
1 West Wilson Street
Room 250
P.O. Box 309
Madison, Wisconsin 53701-0309

BY: Julie Rosenau, SSP

Fond du Lac County Department of Social Services
87 Vincent Street
Fond du Lac, Wisconsin 54935-4595

OTHER PERSONS PRESENT:
, sister of (petitioner spouse)

HEARING OFFICER:
Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx; CARES #xxxxxxxxxx) is a resident of Fond du Lac County.
2. Petitioner's wife's MMMNA is \$1,945.97
3. Petitioner claims monthly expenses for his wife of in excess of the MMMNA of \$1,945.97 and is requesting that her monthly maintenance needs allowance be increased.
4. The following monthly expenses are among those claimed by petitioner for his wife:
 - (i) Headstone/Grave -- \$56.36;
 - (ii) Cable T.V. -- \$42.93;
 - (iii) Life insurance for petitioner -- \$35.00;
 - (iv) Church dues -- \$35.00;
 - (v) XMass club savings -- \$43.00 (\$20.00 per paycheck times 2.15 paychecks per month);
 - (vi) Regular savings -- \$43.00 (\$20.00 per paycheck times 2.15 paychecks per month);The above is a total of \$255.29 per month.
Exhibits #1A, #1B & #2.
5. Petitioner's wife currently needs a monthly income of \$1,995.46 in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs. Exhibits #1A, #1B & #2.

DISCUSSION

Petitioner is a nursing home resident and is receiving MA. Petitioner's wife lives in the community.

When an MA recipient is in a nursing home all of that recipient's income, with certain limited exceptions, must be used to pay nursing home costs. MA pays any nursing home costs which exceed the recipient's income.

Many MA recipients who are nursing home residents are, like petitioner, married and have spouses who live in the community. In these cases, the law recognizes that requiring all of the recipient's income to be used to pay nursing home costs may leave the community spouse in poverty. In order to prevent the impoverishment of the community spouse, the law allows the community spouse to receive the lesser of the following as monthly income: \$2,175.00; or, \$1,935.00 plus excess shelter allowance. This is known as the "Minimum Monthly Maintenance Needs Allowance" (MMMNA). Wis. Stat. §§ 49.455(4)(a)2. &

(c) (199-00); Wis. Admin. Code § HFS 103.075(6)(b)1. & (c)2. (November 2000); MA Handbook, Appendix 23.6.0.Section A. In this case, petitioner's wife's MMMNA is \$1,945.97.

The MMMNA can be increased if either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the MMMNA. Wis. Stat. § 49.455(8)(c) (1999-00); Wis. Admin. Code § HFS 103.075(8)(c) (November 2000); MA Handbook, Appendix 23.6.0.SectionA.1. The phrase “exceptional circumstances resulting in financial duress” means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code § HFS 103.075(8)(c) (November 2000); MA Handbook, Appendix 23.6.0.SectionA.1. Thus, the burden is on the person seeking an increase in the MMMNA. It must be established that the community spouse needs income above the level provided by the MMMNA in order to avoid a situation that would result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs.

The following monthly expenses claimed by petitioner for his wife cannot be allowed as necessary and basic maintenance needs for the reasons indicated:

- (i) Headstone/Grave -- \$56.36; not a maintenance need;
- (ii) Cable T.V. -- \$42.93; not necessary, not basic, and not a maintenance need;
- (iii) Life insurance for petitioner -- \$35.00; not a maintenance need;
- (iv) Church dues -- \$35.00; not necessary, not basic, and not a maintenance need;
- (v) XMass club savings -- \$43.00 (\$20.00 per paycheck times 2.15 paychecks per month); not necessary, not basic, and not a maintenance need;
- (vi) Regular savings -- \$43.00 (\$20.00 per paycheck times 2.15 paychecks per month); not a maintenance need.

The above is a total of \$255.29 per month.

The following monthly expenses claimed by petitioner for his wife can be allowed, in the amounts indicated, as necessary and basic maintenance needs:

- (A) House payment (includes escrow) -- \$426.99;
- (B) Car payment -- \$400.00;
- (C) Kwik cash (debt repayment) -- \$60.00;
- (D) MasterCard (debt repayment) -- \$97.00;
- (E) Ameritech (telephone; includes “line-backer” maintenance plan) -- \$25.75;
- (F) Alliant Power & Light -- \$97.00;
- (G) Water bill -- \$42.00;
- (H) Sears (debt repayment) -- \$25.00;
- (I) Dental insurance (for petitioner’s wife) -- \$3.35 (\$1.56 per paycheck times 2.15 paychecks per month);

(J) Health insurance (for petitioner's wife) -- \$13.37 (\$6.22 per paycheck times 2.15 paychecks per month);
(K) Medicine (for petitioner's wife) -- \$18.75;
(L) Car insurance -- \$33.00;
(M) House insurance -- \$21.75;
(N) Groceries -- \$200.00;
(O) Gas for transportation -- \$80.00;
(P) Uniforms (required for work for petitioner's wife) -- \$31.00;
(Q) Federal taxes on earned income of petitioner's wife -- \$230.74 (monthly amount based on 64.75 hours worked each two week period at \$11.20 per hour);
(R) OASDI FICA taxes on earned income of petitioner's wife -- \$95.63 (monthly amount based on 64.75 hours worked each two week period at \$11.20 per hour);
(S) HI FICA taxes on earned income of petitioner's wife -- \$22.36 (monthly amount based on 64.75 hours worked each two week period at \$11.20 per hour); and,
(T) State taxes on earned income of petitioner's wife -- \$71.77 (monthly amount based on 64.75 hours worked each two week period at \$11.20 per hour).

The above is a total of \$1,995.46 per month. Exhibits #1A, #1B & #2.

Finally, petitioner notes that as of July 13, 2001 the employer of petitioner's wife gave her a wage increase of \$1.00 per hour (before taxes). This Decision addresses the MMMNA only as of April 1, 2001. The County may take the \$1.00 per hour (before taxes) wage increase into account when setting a new MMMNA as of July 13, 2001. Petitioner may request another Hearing if he disagrees with the County's action.

CONCLUSIONS OF LAW

Petitioner has established that his wife needs \$49.49 (\$1,995.46 minus the current MMMNA of \$1,945.97) above the level provided by the MMMNA in order to avoid a situation that would result in her not being able to provide for her own necessary and basic maintenance needs.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the Fond du Lac County Department of Social Services (County) and that, retroactive to April 1, 2001, the County use \$1,995.46 (instead of \$1,945.97) as the MMMNA for petitioner's wife in determining the monthly income allocation to be made from petitioner to his wife. This shall be done within ten days of the date of this Decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in section 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on the Wisconsin Department of Health and Family Services, P.O. Box 7850, Madison, Wisconsin 53707-7850 as the respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in section 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
08282001/SPM

xc:

Fond du Lac County Department of Social Services
Susan Wood, DHFS